IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.579 OF 2005

Ms. Chandrika S. Shah ...Applicant.

V/s

Mr. Nandan Shah & Anr. ...Respondents.

Mr. Mangesh Shirsat for the applicant.
None for respondent No.1
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE : 11th April 2005

P.C.

1. Heard the learned Counsel for the applicant. None appears for respondent No.1

2. Applicant is challenging the order of issuance of process by the Additional Chief Metropolitan Magistrate, 21st Court, Bandra Mumbai in a complaint filed by respondent No.1 under section 138 read with section 141 of the Negotiable Instruments Act.

3. It is alleged that the applicant has resigned as a Director on 29/9/1998 and intimation was given to the Registrar of Companies and Form 32 was filled in. A copy of Form 32 is annexed at Exhibit-B to the Application. It is submitted by the learned Counsel for the applicant that the cheques were alleged to

have been issued on 8/7/2003, 10/7/2003 and 12/7/2003 i.e. after she resigned as a Director and, therefore, the process which was issued qua the applicant was liable to be quashed.

4. In my view, it will not be possible to interfere with the issuance of process at this stage as the issue as to whether the applicant was, in fact, a Director at the time when the cheques were dishonoured or not can be decided after the evidence is adduced. It is no doubt true that there is a presumption raised under section 77 of the Evidence Act and corresponding provision under the Companies Act about the genuineness of the certified copy of a public document such as Form 32. However, this fact can be proved and finally established after the evidence is adduced.

5. It is therefore not possible to interfere with the order of issuance of process. However, it is made clear that the applicant will be exempted from appearing in the Trial Court during trial and her plea also may be recorded through her advocate. It is only at the stage where Magistrate feels that her presence is essential for recording of her statement under section 313 or if she chooses to give evidence she may be asked to attend the Court.

6. It is a settled position in law that if there is no material produced by the complainant to show that the accused had continued to be a Director after the date of resignation then such a Director is liable to be acquitted. The Trial Court shall decide all issues on the basis of the evidence that will be adduced in accordance with law.

7. With the above directions, the application is dismissed.

V.M. KANADE, J.